

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

This matter is before the Court on Defendant Wal-Mart Stores, Inc.'s Motion to Enforce This Court's Prior Orders (#124). The Court conducted a hearing in this matter on September 4, 2014.

BACKGROUND AND DISCUSSION

On April 11, 2014, the Court granted Plaintiff's Motion to Reopen Discovery and Extend Trial Date (#88). *See Order (#107).* The Court found good cause to reopen discovery based on developments in Plaintiff's physical and medical condition that occurred after the close of discovery. Specifically, the Court held that Plaintiff's claim that her low back condition was exacerbated by her subsequent pregnancy and childbirth justified reopening discovery. The order stated:

[T]he Court finds that Plaintiff has shown good cause for a limited reopening of discovery to determine the extent to which her lumbar spine condition and symptoms have been exacerbated by her pregnancy and/or childbirth, and the additional medical treatment that Plaintiff has received or will need to receive as a result thereof. Both parties are also entitled to obtain updated expert medical opinions regarding to what extent, if any, the condition of Plaintiff's lumbar spine following pregnancy and childbirth can reasonably be attributed

1 to injuries caused by the August 2009 accident, rather than her
2 underlying and pre-existing degenerative conditions.

3 In addition to obtaining all relevant medical records and bills, and
4 potentially deposing Plaintiff and Dr. Grover or other treating
5 physicians with respect to her post-childbirth condition, Defendant, if
6 it so desires, is also entitled to an independent medical examination
of the Plaintiff with respect to her low back condition, recommended
treatment and medical prognosis. The parties' counsel are hereby
directed to meet and confer and submit a revised discovery plan and
scheduling order in accordance with the foregoing.

7 *Order (#107), pg. 10.*

8 Plaintiff alleges that as result of the exacerbation of her low back condition, she is now
9 disabled from employment. Therefore, after discovery reopened, Plaintiff disclosed an
10 economist/vocational rehabilitation expert witness and is asserting a damages claim in excess of
11 \$600,000 for loss of expected earnings from the date she allegedly became disabled due to
12 exacerbation of her low back condition. (Plaintiff is not seeking recovery of lost earnings for the
13 period prior thereto, which claim was not disclosed during the previous discovery period).

14 Defendant argues that Plaintiff should be precluded from asserting a claim for loss of
15 earnings because it was not contemplated or referenced in Order (#107). The lack of such reference
16 was not because the Court intended to preclude such a damages claim, but rather because the Court
17 was not aware and failed to recognize that such a claim would be made. If, in fact, the exacerbation
18 of Plaintiff's back condition because of pregnancy and childbirth has now rendered her disabled,
19 and such exacerbation can be causally related to the injuries she sustained in the August 2009
20 accident, then Plaintiff should be allowed to pursue recovery of such damages. Order (#107) did
21 not intend to exclude such damages, just as it did to intend to preclude Plaintiff from recovering
22 general damages for pain and suffering by not mentioning those damages in the order.

23 Defendant argues that it relied on Order (#107) in not disclosing its own economist or
24 vocational rehabilitation experts, and in not pursuing other discovery relating to the alleged loss of
25 income claim. While such reliance is questionable, Plaintiff does not object to permitting
26 Defendant to disclose such experts or conduct other discovery relating to Plaintiff's loss of income
27 claim. Accordingly,

28 . . .

IT IS HEREBY ORDERED that Defendant Wal-Mart Stores, Inc.'s Motion to Enforce This Court's Prior Orders (#124) is **denied** in accordance with the foregoing provisions of this order.

IT IS FURTHER ORDERED that on or before **September 12, 2014**, the parties shall submit a proposed stipulation and order for a further extension of the discovery period relating to Plaintiff's loss of income claim.

DATED this 5th day of September, 2014.

George Foley Jr.
GEORGE FOLEY, JR.
United States Magistrate Judge